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DEPARTMENT OF FINANCIAL SERVICES

Docketed by

AT

TOM GALLAGHER
CHIEF FINANCIAL OFFICER

03-2041 PL
CCA-CWS

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ADMINISTRATIVE
HEARINGS

Case No. 61528-03-AG

IN THE MATTER OF:

CLIFFORD EUGENE KIEFER

FINAL ORDER

This cause came on for consideration of and final agency action on the Recommended Order issued herein by Administrative Law Judge Charles C. Adams on April 2, 2004, after a formal hearing conducted on January 6, 2004, pursuant to Section 120.57(1), Fla. Stat.

Having reviewed the complete record, the Recommended Order, and being otherwise apprised in all material premises,

IT IS HEREBY ORDERED that the Findings of Fact found by the Administrative Law Judge are adopted as the Department's Findings of Fact, and the Conclusions of Law reached by the Administrative Law Judge are adopted as the Department's Conclusions of Law.

However, a review of the record does not support the penalty recommendation made by the Administrative Law Judge. The Administrative Law Judge concluded, inter alia, that Respondent Kiefer had violated Sections 626.611(7) and (8), Florida Statutes, along with Section 626.621(6), Florida Statutes, and Section 626.901(1), Florida

Statutes, the mandatory penalty for violation of each of which is a six month suspension. Rules 4-231.080, 4-231.090, and 4-231.110, F.A.C. Violation of each of those statutes was alleged in each of the three counts of the Amended Administrative Complaint, which is a part of the record in this matter. The Administrative Law Judge concluded that Respondent Kiefer had violated those statutes in each of those three counts. (Paragraphs 98, 102,103, 104, of the Recommended Order) A six-month suspension is the highest penalty that can be imposed for each of the three counts at issue, and Rule 4-231.040 requires that only the highest penalty for a violation within a single count be utilized to impose a penalty for that count. Application of those mandatory rules to the instant facts requires the imposition of an eighteen-month suspension; six months for each of the three counts at issue. The Administrative Law Judge departed from those mandatory rules. He did not cite any mitigating factors to justify that departure, nor does it appear from a review of the complete record that such a departure is justified. Rule 4-231.160, F.A.C. Therefore,

IT IS FURTHER ORDERED that the penalty recommended by the Administrative Law Judge is modified to a suspension of 18 months from the date hereof, and the probationary period and education requirements of the Recommended Order are deleted from this penalty. Pursuant to Section 626.651, Florida Statutes, the suspension of Kiefer's licenses and eligibility for licensure applies to all licenses and eligibility held by Kiefer under the Florida Insurance Code.

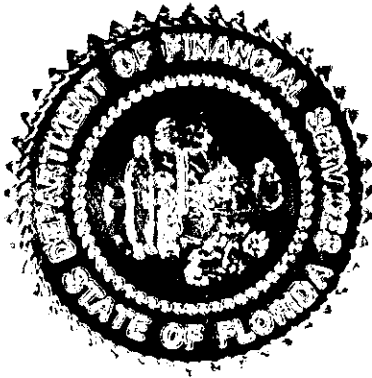
Pursuant to Section 626.641, Florida Statutes, Kiefer shall not engage in or attempt or profess to engage in any transaction or business for which a license is


required under the Florida Insurance Code, or directly or indirectly own, control, or be employed in any manner by any insurance agent, agency, or adjuster or adjusting firm.

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of this Order pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Fla. R. App. P. Review proceedings must be instituted by filing a petition or notice of appeal with the General Counsel, acting as the agency clerk, at 612 Larson Building, Tallahassee, Florida, and a copy of the same with the appropriate district court of appeal within thirty (30) days of rendition of this Order.

DONE AND ORDERED this 28th day of April, 2004.




Karen Chandler
Deputy Chief Financial Officer